

- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of H.R.C. – Village at Little Falls, L. L. C. to construct an 85-unit condominium development as described in Finding 1 in Windham, Maine, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.
5. Prior the start of construction, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, and the contractor
6. Prior to occupancy, the location of the buffer adjacent to the Presumpscot River shall be permanently marked on the ground.
7. The deed for the common area shall contain deed restrictions relative to the buffer and have attached to it a plot plan for the area, drawn to scale, that specifies the location of the buffer. Prior to occupancy of any new building, the applicant shall submit a copy of the recorded deed restrictions, including the plot plan, to the BLWQ.
8. If a rock crusher will be utilized on site during construction, the applicant shall insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

9. Prior to occupancy of any new building, the applicant shall submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the stormwater control structures to the BLWQ.
10. The installation of the stormwater system shall be inspected by the applicant's design engineer or other qualified professional. Upon completion of the system, the applicant shall submit written certification to the BLWQ that it was installed in accordance with the approved plans

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED AT AUGUSTA, MAINE, THIS 26TH DAY OF JULY, 2007.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:

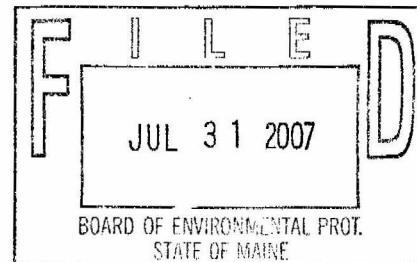

DAVID P. LITTELL, COMMISSIONER

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application March 27, 2007

Date of application acceptance April 5, 2007

Date filed with Board of Environmental Protection
MR/ATS#64978&64979/L23637AN&BN



SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL
IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.

1. This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect.
2. The applicant shall secure and comply with all applicable Federal, State and local licenses, permits, authorizations, conditions, agreements, and orders, prior to or during construction and operation as appropriate.
3. The applicant shall submit all reports and information requested by the Board or Department demonstrating that the applicant has complied or will comply with all conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
5. Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
6. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.
7. If the approved development is not completed within five years from the date of the granting of approval, the Board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred during the five-year period.
8. A copy of this approval must be included in or attached to all contract bid specifications for the development.
9. Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised November 1, 1979



NATURAL RESOURCE PROTECTION ACT (NRPA) STANDARD CONDITIONS

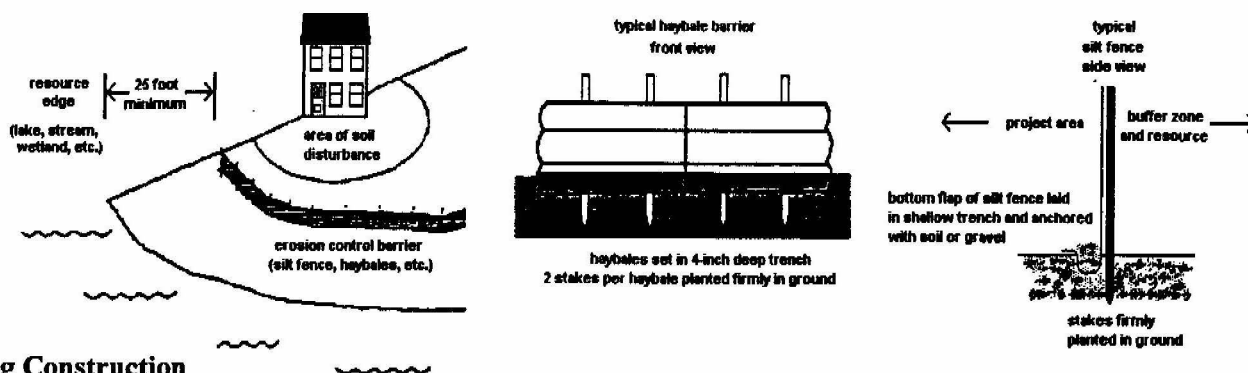
THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. **Approval of Variations From Plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. **Compliance With All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. **Erosion Control.** The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. **Compliance With Conditions.** Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. **Initiation of Activity Within Two Years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. **Reexamination After Five Years.** If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. **No Construction Equipment Below High Water.** No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. **Permit Included In Contract Bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. **Permit Shown To Contractor.** Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

Erosion Control

Before Construction

1. If you have hired a contractor, make sure you have discussed your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is and where it is located. Most people could identify the edge of a lake or a river. The edges of wetlands, however, are often not obvious. Your contractor may be the person actually pushing dirt around but you are both responsible for complying with the permit.
2. Call around and find sources for your erosion controls. You will probably need silt fence, hay bales and grass seed or conservation mix. Some good places to check are feed stores, hardware stores, landscapers and contractor supply houses. It is not always easy to find hay or straw during late winter and early spring. It may also be more expensive during those times of year. Plan ahead. Purchase a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the activity.
4. If a contractor is installing the barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level along the land slope, whenever possible. This keeps stormwater from flowing to the lowest point of the barrier where it builds up and overflows or destroys it.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops striking the soil that causes a lot of erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. In that situation, stop work and figure out what can be done to prevent more soil from getting past the barrier.

After Construction

1. After the project is complete, replant the area. All ground covers are not equal. For instance, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high maintenance areas. The same mix would not be a good choice for stabilizing a road shoulder or a cut bank that you don't intend to mow.
2. If you finish your project after September 15, then do not spread grass seed. There is a very good chance that the seed will germinate and be killed by a frost before it has a chance to become established. Instead, mulch the site with a thick layer of hay or straw. In the spring, rake off the mulch and seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away.
3. Keep your erosion control barrier up and maintained until the area is permanently stabilized.

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.892.1902

fax 207.892.1916

October 25, 2007

HRC Village at Little Falls
Attn: Steve Etzel
2 Market Street
Portland, Maine 04102

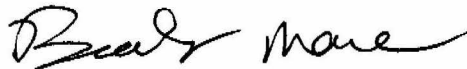
Dear Mr. Etzel:

I am writing to confirm the Planning Board's approval of the Village at Little Falls application for the property located at 7 and 13 Depot Street, identified on Tax Map: 38, Lots: 6, 7, Zone: Little Falls Contract Zone.

For your records, the Planning Board voted four (4) to zero (0) to approve the subdivision plan application with conditions. The motion was made by Dave Nadeau and seconded by Keith Williams.

Enclosed, please find the findings of fact and conclusions and conditions of approval.

Sincerely,



Brooks More, AICP
Director of Planning

Enclosure: Findings of Fact and Conclusions

FINDINGS OF FACT

A. POLLUTION AND SEWERAGE DISPOSAL

- The project will be connected to the public sewer and water system. As a result, it will not produce an undue amount of pollution.

B. WATER

- The Portland Water District confirmed its capacity of serve the project in a letter dated March 16, 2007.

C. SOIL EROSION

- The project received a Site Location of Development Act Permit and a Natural Resources Protection Act permit from the Maine Department of Environmental Protection (MDEP) on July 26, 2007. The permit numbers have been added to the plans.
- The applicant has received approval from the MDEP to meet the quality, but not quantity standards of Stormwater Management Law. The "beat-the-peak" method to stormwater discharge is appropriate for this site's proximity to the river.
- Larry Bastian, P.E. of Gorrill-Palmer Consulting Engineers performed the peer review of the stormwater, soil and erosion control plans. Bastian's initial comments can be found in the attached letter dated July 5th, 2007. Based on subsequent revisions to the plans, Bastian submitted a second letter dated August 3, 2007 which found that the plans meet the Town of Windham's ordinances.
- A storm drain pipe running from Depot Street to the Presumscott River has been identified on this site. The exact course of the buried pipe will not be known until site work commences. It does appear from die tests that the pipe runs under the existing mill building and discharges somewhere in the river. Since the pipe will be disturbed during the construction phase of the project, the Town has contracted with Pine Tree Engineering to create a plan for replacement of the pipe. At this time, the Town is awaiting the results of this study.

D. TRAFFIC

- The traffic study prepared by William J. Bray, P.E. concluded that the project will not require an MDOT Traffic Movement Permit, that there are no high-crash locations in the area, that the project will not decrease the level of service of the intersections in the study area, and that adequate sight distance exists at the proposed driveways.
- A peer review of the traffic study was conducted by Gorrill-Palmer Consulting Engineers, Inc. in a letter dated July 5, 2007. The review found that the study was completed in accordance with industry standard practices.
- The peer review listed five comments for consideration. Bill Bray, P.E. provided additional information on August 11, 2007 in response to the peer review comments. Gorrill-Palmer concluded in a letter dated August 15, 2007 that a left turn lane is not warranted at the intersection of Depot Street and River Road.

E. SEWERAGE

- The project will connect to the public sewer system.
- The Portland Water District will review and approve the final sewer system designs.
- In letter dated March 16, 2007, the Portland water District confirmed its ability to serve the project once improvements have been completed. These improvements are currently under construction, and are anticipated to be completed at the end of 2007.
- The Portland Water District will assume responsibility for the wastewater collection system.

- A pump station will be constructed as part of this project. The pump station will replace the Windham Fire Pump and the Androscoggin Street Pump Station.

F. SOLID WASTE

- Solid Waste will be the responsibility of Home Owners Association.

G. AESTHETICS

- A letter from the Maine Department of Conservation dated December 12, 2005 has confirmed that no rare botanical features have been documented in the project area.
- A letter from the Maine IF&W dated January 17, 2006 confirmed that no endangered fish species or habitat exists in the vicinity of the project.
- A letter from the Maine Historic Preservation Commission dated June 27, 2007 confirmed that there will be no historic or archaeological properties affected by the proposed development.
- The applicant received approval from the MDEP a Voluntary Response Action Program No Action Assurance Letter on November 9, 2005. The letter agreed with the applicant's proposed contamination mitigation plan. The plan included the removal and/or containment of soils contaminated by petroleum and PCBs.

H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- Comprehensive Plan:
 - The project is located within the South Windham Growth Area as depicted on the 2003 Future Land Use Map. The project also falls under Chapter 1, Section H, Subsection 6 that states, "A portion of South Windham, directly across the Presumscott River from Gorham, should be designated as a growth area..."
- Land Use Ordinances:
 - The application meets the standards of the Village at Little Falls Contract Zone Agreement. In particular, all of the proposed uses in the proposed subdivision are listed in the uses permitted by the contract zone. As a result, the Village at Little Falls subdivision application is governed by, and only by, the standards of the Village at Little Falls Contract Zone.
 - Community Facilities Impact Analysis:
 - The applicant's analysis finds that the improvements to the site (removal of derelict mill building and pump station construction), increase in property taxes, off-site improvements to Depot Street, and recreation fees will offset the increase of 8 students in the school system.
- Others:
 - Fire Department: The Fire Department submitted a memo dated August 10, 2007. The memo confirmed that the turning radii within the development have been adequately designed for emergency vehicle movement. In addition, the memo stated the following:
 - The Department's objection to additional speed bumps on the SAPPI access drive,
 - Snow removal around the fire hydrants should be performed by the Condominium Association (language was added to the Condo Association documents),
 - On-street parking should be restricted (a condition of approval has been added).

I. FINANCIAL AND TECHNICAL CAPACITY

- The applicant has submitted documents of financial and technical capacity.

J. RIVER, STREAM OR BROOK IMPACTS

- The project site is adjacent to the Presumscott River. The project has been designed to treat the quality of water discharged into the river. See Section C. Soil Erosion, above.
- The stormwater management plan calls for water to be discharged to the river prior to flood stage. The beat-the-peak method is appropriate for a site adjacent next to the river.
- The applicant received a Conditional Letter of Map Revision for Fill (CLOMR-F) from the Federal Emergency Management Agency (FEMA) on May 8, 2007. The map revision will amend the flood rate maps once the as-builds for the project are submitted to FEMA.

CONCLUSIONS

1. The proposed subdivision **will not** result in undue water or air pollution.
2. The proposed subdivision **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed subdivision **will not** cause an unreasonable burden on an existing water supply.
4. The proposed subdivision **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed subdivision **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed subdivision **will** provide for adequate sewage waste disposal.
7. The proposed subdivision **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed subdivision **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed subdivision **conforms** with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed subdivision **is** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed subdivision **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed subdivision **is** situated entirely or partially within a floodplain.
14. All freshwater wetlands within the proposed subdivision **have** been identified on the plan.
15. Any river, stream, or brook within or abutting the subdivision **has** been identified on any maps submitted as part of the application.
16. The proposed subdivision **will** provide for adequate storm water management.
17. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision **has** a lot depth to shore frontage ratio greater than 5 to 1.
18. ~~The long-term cumulative effects of the proposed subdivision **will/will not** unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.~~
19. ~~For any proposed subdivision that crosses municipal boundaries, the proposed subdivision **will not** cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.~~
20. Timber on the parcel being subdivided **has not** been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14 M.R.S.A.

CONDITIONS OF APPROVAL

1. Approval is dependant upon, and limited to, the proposals and plans contained in the application dated June 1, 2007, as amended August 24, 2007 and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board.
2. The applicant will obtain a 20 foot grading easement from Pan Am to construct the proposed retaining wall. The applicant shall also obtain from Pan Am the right to remove two buildings that encroach on the Pan Am property.
3. The applicant shall install no parking signs along the length of Dogwood Drive. The placement of these signs shall be incorporated into the plans and approved by the Fire Department.
4. The applicant shall pay a recreation impact fee of \$36,000.00. The fee shall be paid on a per unit basis prior to the issuance of a certificate of occupancy for the unit(s) on which a fee is owed.
5. The Town of Windham's stormdrain from Depot Road to the Presumscott River shall be replaced to the Public Works Director's satisfaction prior to the base pavement of Lavender Lane.

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.892.1902

fax 207.892.1916

October 25, 2007

HRC Village at Little Falls
Attn: Steve Etzel
2 Market Street
Portland, Maine 04102

Dear Mr. Etzel:

I am writing to confirm the Planning Board's approval of the Village at Little Falls application for the property located at 7 and 13 Depot Street, identified on Tax Map: 38, Lots: 6, 7, Zone: Little Falls Contract Zone.

For your records, the Planning Board voted four (4) to zero (0) to approve the site plan application with conditions. The motion was made by Dave Nadeau and seconded by Keith Williams.

Enclosed, please find the findings of fact and conclusions and conditions of approval.

Sincerely,



Brooks More, AICP
Director of Planning

Enclosure: Findings of Fact and Conclusions

VIL_RESP01395

FINDINGS OF FACT

Utilization of the Site

- The central portion of the site is occupied by the abandoned mill building. In addition, the slabs or foundations of other structures still remain. The site is directly adjacent to the Presumscott River and Little Falls Dam.
- The downstream portion of the site is wooded.
- The proposed development will removed the existing mill building, concrete foundations and assorted debris.

Vehicular and Pedestrian Traffic

- The findings of the traffic study, and the Town's peer review, are found in the subdivision review.
- The applicant will be contributing to utility and roadway improvements on Depot Street. These improvements are a joint project of the Town, applicant and Portland Water District. The applicant has stated their willingness to obtain bid pricing for the Depot Street improvements.
- The plan provides internal sidewalks on one side of each roadway.

Sewage Disposal and Groundwater Impacts

- See Subdivision Review.

Stormwater Management

- See Subdivision Review.

Erosion Control

- See Subdivision Review.

Utilities

- All utilities have been proposed to be placed underground.

Financial Capacity

- See Subdivision Review.

Landscape Plan

- The applicant has provided a landscape plan on sheet L1. In addition to existing vegetation along the Pan Am railroad right-of-way, the project provides adequate screening for abutting properties.
- The landscape plan includes riverbank restoration on the Presumscott River. This work is being done in accordance with the DEP permit and instructions from the Department of Inland Fisheries and Wildlife.
- Maintenance language for the stormwater treatment plantings has been added to the Condominium Association Documents.

Conformity with Local Plans and Ordinances

- See Subdivision Review.

Impacts to Adjacent/Neighboring Properties

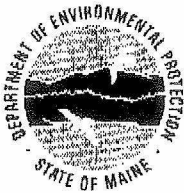
- The removal of the abandoned mill building and associated industrial waste will improve conditions in the South Windham neighborhood.

CONCLUSIONS

1. The plan for development **reflects** the natural capacities of the site to support development.
2. Buildings, lots, and support facilities **will** be clustered in those portions of the site that have the most suitable conditions for development.
3. Environmentally sensitive areas, including but not limited to, wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and, sand and gravel aquifers **will** be maintained and protected to the maximum extent.
4. The proposed site plan **has** sufficient water available for the reasonably foreseeable needs of the site plan.
5. The proposed site plan **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
6. The proposed use and layout **will** be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.
7. The proposed site plan **will** provide for adequate sewage waste disposal.
8. The proposed site plan **conforms** to a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
9. The developer **has** adequate financial capacity to meet the standards of this section.
10. The proposed site plan **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
11. The proposed site plan **will** provide for adequate storm water management.
12. The proposed location and height of buildings or structure walls and fences, parking, loading and landscaping shall be such that it **will not** interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.
13. On-site landscaping **does** provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.

CONDITIONS OF APPROVAL

1. Approval is dependant upon, and limited to, the proposals and plans contained in the application dated July 1, 2007, as amended August 24, 2007 and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

H.R.C. – VILLAGE AT LITTLE FALLS, L. L. C.) SITE LOCATION OF DEVELOPMENT ACT
Windham, Cumberland County) NATURAL RESOURCES PROTECTION ACT
VILLAGE AT LITTLE FALLS) WETLAND OF SPECIAL SIGNIFICANCE
L-23637-87-A-N (approval)) WATER QUALITY CERTIFICATION
L-23637-2G-B-N) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 *et seq.* and 480-A *et seq.*, and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of H.R.C. – VILLAGE AT LITTLE FALLS, L. L. C. with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct an 85-unit condominium development with associated improvements on an 8.03-acre parcel of land. The proposed project includes two 12-unit apartment buildings, nine duplexes, nine porch-style units, 33 townhouse units, and one single-family residence. The proposed project is shown on a set of plans, the first of which is entitled "Cover/Index/Locus Map/Zoning – Village at Little Falls," prepared by Northeast Civil Solutions, and dated June 1, 2007, with a last revision date of July 11, 2007. The project site is located between Depot Street and the Presumpscot River in the Town of Windham.

The proposed project triggers the "structure" threshold of the Site Location of Development Law ("Site Law," 38 M.R.S.A. § 482). The Town of Windham has delegated review authority pursuant to 38 M.R.S.A. § 489-A to conduct Site Law reviews of certain developments that would otherwise require Department review. However, the local reviewing authority requested that the Department review the proposed project.

The applicant is also seeking approval under the Natural Resources Protection Act (N.R.P.A.) to remove an abandoned mill building adjacent to the Presumpscot River and restore the river bank. Since a portion of the building was constructed over the river, this activity will result in the alteration of approximately 4,800 square feet of the river. A majority of the existing wall of the building will be removed, and the area will be regraded to in order to establish a vegetated river bank. A small section of the wall will be left in place to support an existing power plant. Other N.R.P.A. activities proposed by the applicant include filling in a small, artificially-created drainage channel (740 square

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Lee Allen

Northeast Civil Solutions

☐ FAX# ☐ 883.1001

VIL_RESP01398

feet) and constructing stormwater outfall pipes within 75 feet, but not below, the 100-year flood elevation of the river.

B. Current Use of Site: An abandoned mill building and associated piles of debris occupy the site. The building was originally used as a pulp mill and later used as a steel mill. It is located directly on the Presumpscot River and is constructed on a pile-type foundation to allow the river to flow under the western end of the building. The building was abandoned in the late 1980's. The site is immediately downstream of an existing hydro-electric dam owned by Sappi, Inc.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$10,000,000. The applicant stated that the project will be self-financed. Hudson Realty Capital Fund III, L. P. is the owner of HRC – Village at Little Falls, L. L. C. The applicant submitted a Balance Sheet for Hudson Realty Capital Fund III, L. P., dated December 31, 2006, which indicates that the company's total assets are well in excess of the proposed project's cost estimate.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant provided a list of projects successfully constructed by the applicant. The applicant also retained the services of Northeast Civil Solutions, a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

The Department finds that no regulated sources of noise have been identified.

5. SCENIC CHARACTER:

The project site currently contains a dilapidated industrial building. The building will be removed from the site and the river bank will be restored to a more natural, vegetated state. The proposed development was designed to match the village character of the surrounding neighborhood.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries & Wildlife (MDIFW) reviewed the proposed project. In its comments, MDIFW stated that it found no records of any Essential or Significant Wildlife Habitats, or other wildlife habitats of special concern associated with this site.

The project site is located just downriver from an existing housing development and hydroelectric dam. A portion of the land directly adjacent to the Presumpscot River is owned by an abutter, Sappi Paper. A fisheries biologist from MDIFW commented that the Presumpscot River supports a variety of coldwater and warmwater fisheries, including some non-game fish populations. MDIFW recommended that a 100-foot wide vegetated buffer be provided to minimize impacts to the river and protect riparian functions, particularly in the area where the existing mill building is to be removed. The applicant responded to these concerns by revising the plans to provide a minimum 75-foot wide vegetated buffer on the project site. The only permanent structures within the 75-foot buffer will be three stormwater outfall pipes with associated riprap aprons and a portion of a subsurface stormwater system. The applicant submitted a river bank stabilization and planting plan (Sheet L1 of the set of plans referenced in Finding 1, last revised July 11, 2007) depicting the proposed improvements. Given the heavily developed nature of the site; the removal of the mill building, the stabilization of existing erosion problems, and the re-vegetation of the river bank are anticipated to provide immediate and long-term water quality benefits to the fishery.

The buffer will be located in a common area. Once the buffer is stabilized and planted, it should remain undisturbed, and be maintained first by the applicant and subsequently by the condominium owners association. Some disturbance of the buffer may be necessary in the future where a portion of the subsurface stormwater system is located within the buffer in the unlikely event that maintenance of the chamber system is required. However, the isolator row, which will require regular maintenance as discussed in Finding 10, is located outside the buffer.

Prior to occupancy of the first new building, the location of the river buffer must be permanently marked on the ground. The deed for the common area must contain deed restrictions relative to the buffer and have attached to it a plot plan for the area, drawn to scale, that specifies the location of the buffer. Prior to occupancy of the first new building, the applicant must submit a copy of the recorded deed restrictions, including the plot plan, to the BLWQ.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries with the establishment of a 75-foot wide vegetated buffer adjacent to the Presumpscot River.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission (MHPC) reviewed the proposed project and requested a Phase II Archaeological Survey of the site. The applicant submitted a report of the survey, prepared by NEA and dated June 2007. MHPC reviewed the report and stated, in a letter dated June 27, 2007, that the proposed project will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features on the project site and, as discussed in Finding 6, MDIFW did not identify any unusual wildlife habitats located on the project site.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites or unusual natural areas either on or near the development site.

8. BUFFER STRIPS:

A vegetated buffer adjacent to the Presumpscot River will be established as discussed in Finding 6.

The Department finds that the applicant has made adequate provision for buffer strips.

9. SOILS:

The applicant submitted soil survey information and a geotechnical report based on the soils found at the project site. This report was prepared by a registered professional engineer and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Land and Water Quality (BLWQ). DEA also reviewed a Blasting Plan (dated March 19, 2007) submitted by the applicant and outlining the proposed procedures for removing ledge material from the project site. The applicant submitted additional information related to the blasting location map. DEA reviewed this additional information and commented that the applicant adequately addressed its concerns.

If a rock crusher will be utilized on site during construction, the applicant must insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

The Department finds that, based on the soil information, geotechnical report, Blasting Plan, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices.